

1        FILED        ENTERED  
2        LODGED        RECEIVED

3                          APR 10 2009 JS  
4                          AT SEATTLE  
5                          CLERK U.S. DISTRICT COURT  
6                          BY WESTERN DISTRICT OF WASHINGTON  
7                          DEPUTY

8                          UNITED STATES DISTRICT COURT  
9                          WESTERN DISTRICT OF WASHINGTON  
10                         AT SEATTLE

11                         MARK HOVILA,

12                         Plaintiff, )  
13                         v. )  
14                         Tween Brands, Inc., )

15                         Defendant. )

16                         C09 0491 RSL

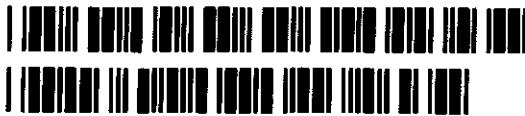
17                         No.

18                         DECLARATION OF GRANT S.  
19                         DEGGINGER

20                         GRANT S. DEGGINGER declares as follows:

21                         1. I am a citizen of the United States of America, am over the age of 18 years,  
22                         and am competent to make this declaration based upon my personal knowledge and to  
23                         identify the exhibits attached hereto. I am an attorney at Lane Powell PC, which represents  
24                         defendant Tween Brands, Inc.

25                         2. On March 11, 2009, plaintiff Mark Hovila ("Plaintiff") commenced this action  
26                         against Tween Brands, Inc. ("Tween Brands") in the Superior Court of Washington for King  
27                         County (now pending as Case No. 09-2-11996-1). True and correct copies of the Summons  
28                         and Complaint for Damages, Injunctive and Declaratory Relief are attached hereto as  
29                         Exhibit A.



30                         09-CV-00491-DECL

31                         DECLARATION OF GRANT S. DEGGINGER - 1

32                         124123.0001/1693993.1

33                         LANE POWELL PC  
34                         1420 FIFTH AVENUE, SUITE 4100  
35                         SEATTLE, WASHINGTON 98101-2338  
36                         206.223.7000 FAX: 206.223.7107

1       3. Plaintiff served Tween Brands' registered agent CT Corporation with the  
2 Summons and Complaint on March 12, 2009. A true and correct copy of the Service of  
3 Process Transmittal is attached hereto as Exhibit B.

4       4. A true and correct copy of the Notice of Appearance entered by Lane Powell  
5 PC on behalf of defendant is attached hereto as Exhibit C.

6           I declare under penalty of perjury under the laws of the United States and the State of  
7 Washington that the foregoing is true and correct.

8  
9           DATED this 10<sup>th</sup> day of April, 2009.

10           LANE POWELL PC

11           By   
12           Grant S. Degginger, WSBA No. 15261  
13           Barbara J. Duffy, WSBA No. 18885  
14           Attorneys for Defendant Tween Brands, Inc.

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DECLARATION OF GRANT S. DEGGINGER - 2

LANE POWELL PC  
1420 FIFTH AVENUE, SUITE 4100  
SEATTLE, WASHINGTON 98101-2338  
206.223.7000 FAX: 206.223.7107

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7 SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

8 MARK HOVILA,

CLASS ACTION

9 Plaintiff,

Case No. 09-2-11996-1 SEA

10 vs.

11 COMPLAINT FOR DAMAGES,  
12 TWEEN BRANDS, INC.  
13 RELIEF

Defendant.

14 Plaintiff Mark Hovila, individually and as class representative for a CLASS OF  
15 SIMILARLY SITUATED INDIVIDUALS, alleges as follows:

16 I. PARTIES, JURISDICTION, VENUE

17 1.1. Defendant is a Delaware corporation with its principle offices in New Albany,  
18 Ohio.

20 1.2. Plaintiff is a resident of Lake Forest Park and the owner of the telephone on  
21 which he receives calls, including those which are the subject of this complaint.

22 1.3. The calls in question were received in King County, Washington.

23 1.4. Venue and Jurisdiction are proper under RCW 4.12.020, RCW 2.08.010, and  
24 Wash. Const. Art. 4, §6.

25  
26

COMPLAINT FOR DAMAGES, INJUNCTIVE AND  
DECLARATORY RELIEF - 1

WILLIAMSON  
& WILLIAMS

167 PARKITY NEW SW  
SUITE 230  
KINGSTON, WA 98336  
(360) 780-4444  
(360) 780-4449 (fax)  
[www.williamslaw.com](http://www.williamslaw.com)

EXHIBIT A

1  
2                   **II. FACTS**  
3

4       2.1   In December 2008 the defendant placed a call to plaintiff's telephone number.  
5  
6       2.2.   The call consisted of a pre-recorded message delivered by an automatic dialing  
7 and announcing device ("ADAD"). The pre-recorded message identified itself as being from  
8 defendant, soliciting plaintiff to redeem coupons.  
9  
10      2.3.   Upon information and belief, defendant placed hundreds or more substantially  
11 similar telephone calls to the telephones of persons in Washington State.  
12  
13      2.4.   Upon information and belief, defendant intends to continue to send messages to  
14 the telephones of persons in Washington State.

15                   **III. CAUSES OF ACTION**  
16

17       3.1.   Plaintiff realleges the foregoing paragraphs as if fully stated herein. The  
18 following causes of action are, to the extent necessary, stated in the alternative.  
19

20                   **Count A. Violation 47 U.S.C. 227(b)(1)(B)**  
21

22       3.11.   Defendant has violated 47 U.S.C. 227(b)(1)(B).  
23  
24       3.12.   As a result of said conduct, plaintiff and members of the Class have sustained  
25 damages. Plaintiff and all members of the Class are entitled to injunctive relief enjoining  
26 defendant's unlawful conduct, as well as incidental statutory or other damages.

27                   **Count B. Violation of RCW 80.36.400**  
28

29       3.13   Defendant has violated RCW 80.36.400  
30  
31       3.14.   As a result of said conduct, plaintiff and members of the Class have sustained  
32 damages. Plaintiff and all members of the Class are entitled to injunctive relief enjoining  
33 defendant's unlawful conduct, as well as incidental statutory or other damages.

**Count C. Violation of RCW 19.86**

3.15 Under RCW 80.36.400(3), defendant's violation of RCW 80.36.400 constitutes a violation of RCW 19.86, et seq., the Washington Consumer Protection Act ("CPA").

3.16 As a result of said conduct, plaintiff and members of the Class have sustained damages. Under the CPA, plaintiff and all members of the Class are entitled to injunctive relief enjoining defendant's unlawful conduct, as well as incidental and statutory damages and treble that amount as determined by law, and costs of suit and attorney's fees.

**Count D. Declaratory Relief Under The Washington  
Declaratory Judgment Act (RCW 7.24.010)**

3.17 Defendant used an automated dialing and announcement device to send a prerecorded message to the telephones of persons in Washington.

3.18 Plaintiff and the Class are entitled to have their rights, status and legal relations relating to defendant's use of an automatic dialing and announcing device established by this Court.

#### **IV. CLASS ACTION ALLEGATIONS**

4.1. Plaintiff realleges the foregoing paragraphs as if fully stated herein.

4.2. This class action is brought and may be maintained pursuant to CR 23(b)(2) and (b)(3). Plaintiff seeks to represent a Class comprised of:

All persons who received a prerecorded telephone message on their telephone from defendant sent by automatic dialing machine.

4.3. **Numerosity.** The class and subclass are each so numerous that joinder of all members is impracticable. Upon information and belief the Class exceeds 1,000.

**COMPLAINT FOR DAMAGES, INJUNCTIVE AND  
DECLARATORY RELIEF - 3**

**WILLIAMSON  
& WILLIAMS** 167 MARTIN SW SW  
SUITE 250  
MONTGOMERY, ALABAMA, 36101-1000  
(205) 726-4447  
(800) 736-9337 6000  
[www.williams-law.com](http://www.williams-law.com)

1       **4.4. Common Questions of Law and Fact.** The questions of law and fact are the  
2 same for all class members, including whether the defendant's conduct violated 47 U.S.C.  
3 227(b)(1)(B).

4       **4.5. The Plaintiff's Claims are Typical of the Class.** Plaintiff's claims are typical  
5 of the class in that they arise from defendant's repeated violation of 47 U.S.C. 227(b)(1)(B) and  
6 RCW 80.36.400, and the CPA as to plaintiff and all other class members.

7       **4.6. The Plaintiff Will Fairly and Adequately Protect Class.** Plaintiff will  
8 adequately represent and protect the interests of the class because he has retained competent  
9 and experienced counsel and his interests in the litigation are not antagonistic to the other  
10 members of the class.

11       **4.7. A Class Action is Maintainable Under CR 23(b)(3).** The questions of law and  
12 fact common to all members of the class predominate over questions affecting only individual  
13 members of the class, because all members of the class were subjected to defendant's unlawful  
14 use of one or more ADADs. The prosecution of separate actions by individual members of the  
15 class against defendants would create the risk of inconsistent or varying adjudications and  
16 incompatible standards of treatment. On information and belief, there are no other pending  
17 class actions concerning these issues. A class action is superior to any other available means  
18 for the adjudication of this controversy. This action will cause an orderly and expeditious  
19 administration of the Class's claims; economies of time, effort and expense will be fostered;  
20 and uniformity of decisions will be ensured at the lowest cost and with the least expenditure of  
21 judicial resources.

22       **4.8. A Class Action is Maintainable Under CR 23(b)(2).** Defendant has acted on  
23 grounds generally applicable to plaintiff and the Class as alleged herein, thereby making

1 appropriate injunctive and declaratory relief, as well as incidental damages, with respect to the  
2 Class as a whole.

3 **V. PRAYER FOR RELIEF**

4 WHEREFORE, the plaintiff, on behalf of himself and the class of similarly situated  
5 individuals, respectfully requests that the Court enter judgment in his favor and in favor of the  
6 class for:

- 7 A. Certification of the Class pursuant to CR 23(b)(2) and CR 23(b)(3);  
8 B. Granting declaratory, equitable, and/or injunctive relief as permitted by law to  
9 ensure that defendant will not continue to use automatic dialing and  
10 announcement devices to send messages to telephone subscribers;  
11 C. Judgment against defendant for incidental statutory damages of \$500.00 per  
12 message sent to plaintiff and each member of the Class, and other damages are  
13 permitted under federal and state law;  
14 D. Any other or further relief which the court deems fair and equitable.  
15

16 DATED this 11 day of March, 2009.

17 WILLIAMSON & WILLIAMS

18 By Rob W.

19 Kim Williams, WSBA # 9077  
20 Rob Williamson, WSBA #11387

21 *Attorneys for Plaintiff and the Proposed  
22 Class*

Served by  
ABC Legal

MAR 12 2009

Time: 9 50

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR KING COUNTY

9 MARK HOVILA,

CLASS ACTION

10 Plaintiff,

v.

11 No. 09-2-11996-1 SEA

12 TWEEN BRANDS, INC.,

SUMMONS

13 Defendant.

14 TO: TWEEN BRANDS, INC., Defendant,

15 A lawsuit has been started against you in the above-entitled Court by the  
16 plaintiff. Plaintiff's claims are stated in the written Complaint, a copy of which is served  
17 upon you with this Summons.

18 In order to defend against the lawsuit, you must respond to the Complaint by  
19 stating your defense in writing, and serve a copy upon the undersigned attorney for the  
20 Plaintiff within twenty (20) days after the service of this Summons, or within sixty (60)  
21 days if this Summons was served outside the State of Washington, excluding the day of  
22 service, or a default judgment may be entered against you without notice. A default  
23 judgment is one where the Plaintiff is entitled to what has been asked for because you  
24

25  
26  
SUMMONS -1

WILLIAMSON  
& WILLIAMS

102 PINEHURST ROAD SW  
SUITE 250  
REDMOND, WASHINGTON 98053  
(425) 875-4411  
(800) 565-3333 (toll)  
[www.williamslaw.com](http://www.williamslaw.com)

1 have not responded. If you serve a notice of appearance on the undersigned attorney, you  
2 are entitled to notice before a default judgment may be entered.  
3

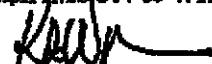
4 If you wish to seek the advice of an attorney in this matter, you should do so  
5 promptly so that your written response, if any, may be served on time.

6 THIS SUMMONS is issued pursuant to Rule 4 of the Superior Court Civil Rules  
7 of the State of Washington.

8

9 DATED this 11 day of March, 2009.

10 WILLIAMSON & WILLIAMS

11 By:   
12 Rob Williamson, WSBA # 11387  
13 Kim Williams, WSBA #9077

14 *Attorneys for Plaintiff*

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SUMMONS -2

122 PARKIN WAY SW  
SUITE 200  
SEATTLE, WA 98110  
206 760-4017  
206 760-6557 FAX  
[www.williamson.com](http://www.williamson.com)



**TO:** Greg Henchel, Sr. Vice President and General Counsel  
TWEEN BRANDS, INC.  
8323 Walton Parkway  
New Albany, OH 43054-

**RE:** Process Served In Washington

**FOR:** TWEEN BRANDS, INC. (Domestic State: DE)

**Service of Process  
Transmittal**  
03/12/2009  
CT Log Number 514565488



**ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:**

**TITLE OF ACTION:** Mark Hovila, Pltf. vs. Tween Brands, Inc., Dft.

**DOCUMENT(S) SERVED:** Summons, Class Action Complaint, Order

**COURT/AGENCY:** King County, Superior Court - Seattle, WA  
Case # 09-2-11996-1

**NATURE OF ACTION:** Pertaining to automated messages soliciting coupons - Seeking Injunctive Relief

**ON WHOM PROCESS WAS SERVED:** CT Corporation System, Olympia, WA

**DATE AND HOUR OF SERVICE:** By Process Server on 03/12/2009 at 09:50

**APPEARANCE OR ANSWER DUE:** Within 20 days after service, excluding the day of service

**ATTORNEY(S) / SENDER(S):** Rob Williamson  
Williamson & Williams  
187 Parfitt Way SW  
Suite 250  
Bainbridge Island, WA 98110  
206-780-4447

**ACTION ITEMS:** CT has retained the current log, Retain Date: 03/12/2009, Expected Purge Date:  
03/17/2009  
Telephone, Kyndall Potts , 614-775-3232  
Image SOP  
Email Notification, Kyndall Potts kpotts@tweenbrands.com  
Email Notification, Greg Henchel ghenchel@tweenbrands.com  
Email Notification, Jennifer Kramer jkramer@tweenbrands.com  
Email Notification, Becky Sorem b5orem@tweenbrands.com  
Email Notification, Rosanne Yang ryang@tweenbrands.com  
Email Notification, Rosanne Yang ryang@tweenbrands.com

**SIGNED:** CT Corporation System  
**PER:** Michele Rowe  
**ADDRESS:** 1801 West Bay Drive NW  
Suite 206  
Olympia, WA 98502  
**TELEPHONE:** 360-357-6794

Page 1 of 1 / JM

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.

|D EXHIBIT B

1 THE HONORABLE CATHERINE SHAFFER  
2  
3  
4  
5  
6

7 SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

8 MARK HOVILA,

9 Plaintiff,

} CLASS ACTION

10 v.

} NO. 09-2-11996-1 SEA

11 TWEEN BRANDS, INC.,

} NOTICE OF APPEARANCE

12 Defendant.

13  
14 TO: Mark Hovila, Plaintiff

15 AND TO: Rob Williamson and Williamson & Williams, attorneys for Plaintiff

16 PLEASE TAKE NOTICE that without waiving any objections as to personal or  
17 subject matter jurisdiction, venue, sufficiency of process or service of process, defendant in  
18 the above-referenced action hereby appears by its undersigned attorneys, GRANT S.  
19 DEGGINGER, BARBARA J. DUFFY, and LANE POWELL PC, and requests that service of  
20 all papers and pleadings herein, except writs of original process, be made upon the  
21 undersigned attorneys for said defendant at the offices below stated.  
22

DATED: March 27, 2009

23 LANE POWELL PC  
24  
25 By   
26 Grant S. Degginger, WSBA No. 15261  
Barbara J. Duffy, WSBA No. 18885  
Attorneys for Defendant Tween Brands, Inc.

NOTICE OF APPEARANCE - 1  
NO. 09-2-11996-1

124123.0001/1693157.1

LANE POWELL PC  
1420 FIFTH AVENUE, SUITE 4100  
SEATTLE, WASHINGTON 98101-2338  
206.223.7000 FAX: 206.223.7107

11 EXHIBIT C

1                   CERTIFICATE OF SERVICE

2                   I hereby certify that on March 27, 2009, I caused to be served a copy of the foregoing  
3 NOTICE OF APPEARANCE on the following person(s) in the manner indicated below at the  
4 following address(es):

5                   Rob Williamson  
6                   Williamson & Williams  
7                   187 Parfitt Way SW, Suite 250  
8                   Bainbridge Island, WA 98110-2593  
9                   Telephone: (206) 780-4447  
10                  Facsimile: (206) 780-5557  
11                  E-Mail: robw@williamslaw.com

12

13                   by CM/ECF  
14                   by Electronic Mail  
15                   by Facsimile Transmission  
16                   by First Class Mail  
17                   by Hand Delivery  
18                   by Overnight Delivery

19                    
20                  Moneca Mc Ynturff

21                  NOTICE OF APPEARANCE - 2  
22                  NO. 09-2-11996-1

23                  124123.0001/1693157.1

24                  LANE POWELL PC  
25                  1420 FIFTH AVENUE, SUITE 4100  
26                  SEATTLE, WASHINGTON 98101-2338  
                      206.223.7000 FAX: 206.223.7107